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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

TOM SCOCCA, MADISON
 SOCIETY, INC., and THE
 CALGUNS FOUNDATION, INC.,

Plaintiffs,

vs.

SHERIFF LAURIE SMITH (In her
 individual and official capacity.),
 COUNTY OF SANTA CLARA, and
 DOES 1 to 20,

Defendants.

Case No.: CV 11 01318 EMC

PLAINTIFFS' SUR-REPLY

Date: November 15, 2012
 Time: 9:30 a.m.
 Courtroom: 5, 17th Floor
 Judge: Hon. Edward M. Chen

Pursuant to this Court's order filed on November 13, 2012 (Doc #55),
 Plaintiffs file this Sur-Reply on the issue of whether "*the instant action should not
 be stayed pending a decision by the Ninth Circuit in Peruta and Richards.*"

The only argument Plaintiffs can make against a stay would be the
 continuing violation of SCOCCA's constitutional rights, and that a stay of this case
 will delay the resolution that continuing violation. Analogizing First Amendment
 claims to Second Amendment claims, Plaintiffs would direct this Court to the

1 discussion in *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011):

2 [F]or some kinds of constitutional violations, irreparable harm is
 3 presumed. See 11A Charles Alan Wright Et Al., Federal Practice &
 4 Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a
 5 constitutional right is involved, most courts hold that no further
 6 showing of irreparable injury is necessary."). This is particularly true
 7 in First Amendment claims. See, e.g., *Christian Legal Soc'y*, 453 F.3d
 8 at 867 ("[V]iolations of First Amendment rights are presumed to
 9 constitute irreparable injuries" (citing *Elrod v. Burns*, 427 U.S.
 10 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976))). The loss of a First
 11 Amendment right is frequently presumed to cause irreparable harm
 12 based on "the intangible nature of the benefits flowing from the
 13 exercise of those rights; and the fear that, if those rights are not
 14 jealously safeguarded, persons will be deterred, even if imperceptibly,
 15 from exercising those rights in the future." *Miles Christi Religious
 Order v. Twp. of Northville*, 629 F.3d 533, 548 (6th Cir. 2010) (internal
 16 alteration and quotation marks omitted); see also *KH Outdoor, LLC v.
 City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006).

15 *Ezell v. City of Chicago, Id.*, at 699

16 However, without conceding the point that justice delayed is justice denied,
 17 Plaintiffs would concede that the Ninth Circuit is likely to take up issues in
 18 *Richards* and *Peruta* that will assist this Court and these litigants in adjudicating
 19 the claims raised in this case.

20 RESPECTFULLY SUBMITTED,

21 Dated: November 13, 2012,

22 /s/ Donald Kilmer

23 Donald Kilmer, Jr. [SBN: 179986]
 24 Law Offices of Donald Kilmer, APC
 25 Attorneys for Plaintiffs